IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 173 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

SUNISHA SIDDHARTH FAMILY TRUST

Appearance:

1. INCOME TAX REFERENCE No. 173 of 1988
MR BB NAIK for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 04/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following questions of law have been referred to this for its opinion court under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that on a proper construction of proviso to sub-clause 8(b) and 8(d) of the trust deed, the shares of the beneficiaries of the trust could be regarded as determined and definite?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the provisions of section 164 of the I.T. Act were not applicable?

2. Learned Standing Counsel for the Central Government Shri B.B. Nayak has appeared for the revenue whereas nobody has appeared for the respondent assessee trust though notice of this court has been duly served upon the trust.

3. It has been submitted by Shri Nayak appearing for the revenue that the trust has already been held to be a specific trust by this court and question No. 2, which has been referred to hereinabove, had been referred to this court in I.T.R. No. 22/94. Looking to the law laid down by this court in the judgment dated 26.7.2002 passed in I.T.R. No. 22/94, we answer the questions referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(K.M Mehta, J.)

(hn)